

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION LIMITED, a foreign limited
liability corporation,

Plaintiff,

v.

OSPREY UNDERWRITING AGENCY
LIMITED, AND ITS CERTAIN
UNDERWRITERS, a foreign unincorporated
entity and/or corporation, and AMERICAN
STEAMSHIP OWNERS MUTUAL
PROTECTION AND INDEMNITY
ASSOCIATION, INC., believed to be a New
York corporation,

Defendants.

Case No.: 15-cv-00043-RSM

**DECLARATION OF CHRISTOPHER
W. NICOLL IN SUPPORT OF
AMERICAN STEAMSHIP OWNERS
MUTUAL PROTECTION AND
INDEMNITY ASSOCIATION, INC.,
LCR 7(H) MOTION FOR
RECONSIDERATION**

NOTE ON MOTION CALENDAR:

MAY 5, 2016

I, Christopher W. Nicoll, declare as follows:

1. My name is Christopher W. Nicoll. I am over the age of eighteen and competent to make this declaration, which is based on my personal knowledge. I am one of the attorneys representing American Steamship Owners Mutual Protection and Indemnity Association, Inc. ("The American Club").

2. In mid-to-late January, 2016 I was in communication with counsel for co-

DECLARATION OF CHRISTOPHER W. NICOLL
IN SUPPORT OF MOTION TO RECONSIDER - 1
Case No.: 15-cv-00043-RSM

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1 defendant, Osprey, concerning the possibility of filing a joint motion to dismiss under Fed. R.
2 Civ. P. 12. Osprey was not making all of the arguments that we felt should be made, but we
3 were not able to get our additions to their draft finished by the time Osprey had decided that it
4 wanted to file its motion to dismiss. Consequently, Osprey filed its own motion and we had to
5 decide whether to file a separate one of our own or to join theirs, while adding the arguments
6 we felt should be included.

7 3. Osprey filed its motion on January 20, 2016, with a noting date of February 12,
8 2016. The American Club decided to join in Osprey's motion and to include its additional
9 arguments in favor of dismissal after we were unable to find any rule prohibiting such a
10 joinder. We were, of course, aware of the page and time limits set forth in LCR 7. Under that
11 rule dispositive motions and responses are limited to 24 pages, and the opponent's response is
12 due on the Monday prior to consideration, which in this case would have been February 8,
13 2016.

14 4. On about February 1, 2016, before filing our joinder pleading, I called and
15 spoke with Steamship Mutual's counsel, John E.D. ("Jed") Powell. I told him that we were
16 going to file a joinder and that our joinder raised additional issues, which I summarized for
17 him. I told him that the joinder was about 8 pages long and that, in light of the timing, if he felt
18 he needed more time to respond that I would agree to added time and seek the agreement of
19 Osprey's counsel, which I was confident I would get. Jed thanked me for the call and said that
20 he would read the joinder after it was filed and that if he felt he needed more time he would let
21 me know. Otherwise, he said he was already mostly finished with his response to Osprey's
22 motion and did not feel he would be able to respond to our added arguments by the existing
23 deadline of February 8. Thereafter, Jed did not contact me seeking additional time. Instead, he
24 responded to Osprey's motion and the American Club's joinder without objection.

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1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 5th day of May 2016.

3 By: /s/ Christopher W. Nicoll
4 Christopher W. Nicoll, WSBA #20771

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DECLARATION OF CHRISTOPHER W. NICOLL
IN SUPPORT OF MOTION TO RECONSIDER - 3
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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/CF system which will send notification of such filing to the following:

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DATED this 5th day of May 2016.

NICOLL BLACK & FEIG PLLC

/s/ Christopher W. Nicoll

Christopher W. Nicoll, WSBA No. 20771
Attorneys for Defendant American Steamship
Owners Mutual Protection and Indemnity
Association, Inc.

DECLARATION OF CHRISTOPHER W. NICOLL
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